



STATE OF UTAH
NATURAL RESOURCES & ENERGY
Oil, Gas & Mining

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M E M O R A N D U M
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TO: Board of Oil, Gas and Mining

FROM: Ron Daniels

DATE: May 26, 1982

SUBJECT: Criteria for the Board's use in accepting personal guarantee
reclamation sureties.

Pursuant to your directive to the staff at the April Board Meeting, I have examined several alternatives, one which you may choose to follow in accepting financial reclamation assurance from owners or operators of mining properties.

First, if the Board were to rely on bond ratings alone, the attached copy (Enc. #1) of a description of bond ratings and their meanings was supplied to me by Harold Black, the Division financial officer. The essence of the paper is that BBB (from Standard and Poor's) and Baa (from Moody's) ratings or better are believed to be safe investment candidates.

Second, the U.S. Environmental Protection Agency (E.P.A.) is using a financial test of corporations to determine their financial responsibility. The Board could pattern its criteria after the E.P.A. tests described on enclosure #2 which is the Federal Register from 4/7/82. The final promulgated financial test is shown on page 15034, column 1. The test has two alternatives, I and II. Alternative II can be used for those companies who have a bond rating and alternative I can be used for other companies. Using alternative I, the worth of the company would have to be substantial.

One aspect of the E.P.A. test which must be kept in mind, is the fact that the test of financial responsibility is for hazardous waste disposal sites which have a closure cost and a post closure (maintenance) cost. Financial assurance to the Board for mines would cover closure cost and a five year revegetation responsibility. This does not apply to uranium mill tailings reclamation which I recommend we handle when the Nuclear Regulatory Commission develops its financial tests. My point in drawing your attention to the different purpose of the E.P.A. test is, merely, to emphasize that there may be more risk for a longer term which is being secured by E.P.A.

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Lastly, I understand a financial test is mentioned in the Atlas Minerals Corporation petition to the Board, and further that the "Atlas Financial Test" is similar to the one being developed by the Utah Mining Association (U.M.A.). Not having a copy of the U.M.A. proposal, I cannot comment on its suitability for financial assurance.

Recommendation:

Of the three alternatives, bond rating, E.P.A. test, or U.M.A. test, I cannot at this time make a suggestion to the Board as to the preferable system. I believe that the bond rating system may not be applicable due to its not being useful for all companies, and that the E.P.A. test may be too stringent as worded. Thus, my recommendation at this time is to use the E.P.A. test in modified form or examine the U.M.A. proposal once we have had an opportunity to review same.

Enclosure

RD/mn

Ratings Ratings measure the probability of a bond issuer repaying the principal amount at maturity and meeting the scheduled interest payments. Viewed another way, ratings rank issues according to their perceived risk of default. They are computed and published by objective, independent organizations. The two best known rating agencies are Standard & Poor's Corporation and Moody's Investor Service Incorporated. Their ratings are available on a subscription basis and in a variety of publications that can usually be found at a local library or brokerage office.

Together, the two agencies rate most of the publicly held corporate and municipal bonds. In addition, Moody's rates many Treasury and government agency issues. They do not, however, rate privately placed bonds, unless they are asked to on a fee basis. In recent years, nearly 50 per cent of all bond issues have been placed privately which simply means that investors, usually institutions, have purchased the bonds directly from the issuer without any public distribution. Although preferred stocks have ratings which appear identical to bond ratings, they are not directly comparable because bonds represent debt and preferred stocks are equity (ownership).

The rating agencies use a simple system of letters to indicate their judgment of an issue's safety of principal and interest payment stability. Standard & Poor's ranks bonds from high quality to low by using the first four letters of the alphabet in groups of three, as follows: AAA, AA, A, BBB, BB, B and so on through D. Bonds downgraded or rated in default, investors commonly refer to the highest rating as "Triple-A."

Moody's uses a similar system applying the following: Aaa, Aa, A, Baa, Baa1, Baa2, Baa3, Baa4, Baa5, Baa6, Baa7, Baa8, Baa9, Baa10, Baa11, Baa12, Baa13, Baa14, Baa15, Baa16, Baa17, Baa18, Baa19, Baa20, Baa21, Baa22, Baa23, Baa24, Baa25, Baa26, Baa27, Baa28, Baa29, Baa30, Baa31, Baa32, Baa33, Baa34, Baa35, Baa36, Baa37, Baa38, Baa39, Baa40, Baa41, Baa42, Baa43, Baa44, Baa45, Baa46, Baa47, Baa48, Baa49, Baa50, Baa51, Baa52, Baa53, Baa54, Baa55, Baa56, Baa57, Baa58, Baa59, Baa60, Baa61, Baa62, Baa63, Baa64, Baa65, Baa66, Baa67, Baa68, Baa69, Baa70, Baa71, Baa72, Baa73, Baa74, Baa75, Baa76, Baa77, Baa78, Baa79, Baa80, Baa81, Baa82, Baa83, Baa84, Baa85, Baa86, Baa87, Baa88, Baa89, Baa90, Baa91, Baa92, Baa93, Baa94, Baa95, Baa96, Baa97, Baa98, Baa99, Baa100, Baa101, Baa102, Baa103, Baa104, Baa105, Baa106, Baa107, Baa108, Baa109, Baa110, Baa111, Baa112, Baa113, Baa114, Baa115, Baa116, Baa117, Baa118, Baa119, Baa120, Baa121, Baa122, Baa123, Baa124, Baa125, Baa126, Baa127, Baa128, Baa129, 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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[SWH-FRL-1942-76]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Financial Requirements

AGENCY: Environmental Protection Agency.

ACTION: Revised interim final rules.

SUMMARY: These regulations revise interim final regulations that were promulgated on January 12, 1981 (46 FR 2851-66, 2877-88). Under the January 12, 1981, regulations owners or operators of hazardous waste management facilities had to estimate the costs of closure and post-closure care of such facilities and had to assure financing of those costs through any of three mechanisms:

- A financial test which demonstrates the financial strength of the company owning the facility (or a parent company guaranteeing financial assurance for subsidiaries), or
 - An insurance policy that will provide funds for closure or post-closure care.
- In addition, specifications for the mechanisms included in the January 12, 1981, regulations have been modified, and minor clarifications have been made to the rules for estimating the costs of closure and post-closure care.

These amendments thus deal only with closure and post-closure financial assurance requirements. Third-party liability insurance requirements were also included in the January 12, 1981, promulgation. They will be the subject of a separate Federal Register notice to be published shortly.

DATES: Effective Dates: July 6, 1982 for standards for financial assurance of closure and post-closure care (40 CFR 264.142-151 except 264.147, and 265.142-151 except 265.147); November 19, 1980, for the cost-estimating standards for interim status facilities (40 CFR 265.142 and 265.144), and July 13, 1981, for cost estimating standards for general status (40 CFR 264.142 and 264.144). The liability requirements (§§ 264.147 and

265.147) currently have an effective date of April 13, 1982.

Comment Date: EPA will accept public comments on the revised regulations until June 7, 1982.

ADDRESSES: Comments should be sent to Docket Clerk (Docket No. 3004), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Public Docket: The public docket for these regulations is located in Room S269-C, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., which is open to the Public from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Among other things, the docket contains background documents which explain, in more detail than the preamble to this regulation, the basis for the provisions in this regulation.

Submissions and Correspondence to the Regional Administrator: All documents and correspondence to be submitted to the Regional Administrator regarding these financial requirements should be marked "Attention: RCRA Financial Requirements" as part of the address.

Copies of Regulations: Single copies of these regulations will be available while the supply lasts from RCRA Hotline, (800) 424-9346 (toll-free) or (202) 382-3000.

FOR FURTHER INFORMATION CONTACT: For general information call the RCRA Hotline or write to Emily Sano, Desk Officer, Economic and Policy Analysis Branch, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

For information on implementation of these regulations, contact the EPA regional offices below:

Region I

Gary Gosbee, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-1591

Region II

Helen S. Beggan, Chief, Grants Administration Branch, 26 Federal Plaza, New York, New York 10007, (212) 264-9860

Region III

Anthony Donatoni, Hazardous Materials Branch, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-7937

Region IV

Dan Thoman, Residuals Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30308, (404) 881-3067

Region V

Thomas B. Golz, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-4023

Region VI

Henry Onsgard, Attention: RCRA Financial Requirements, 1201 Elm Street, First International Building, Dallas, Texas 75270, (214) 767-3274

Region VII

Robert L. Morby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106, (816) 374-3307

Region VIII

Carol Lee, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203, (303) 837-6258

Region IX

Richard Procnunier, Hazardous Materials Branch, 215 Fremont Street, San Francisco, California 94105, (415) 974-8165

Region X

Kenneth D. Feigner, Chief, Waste Management Branch, 1200 6th Avenue, Seattle, Washington 98101, (206) 442-1260

SUPPLEMENTARY INFORMATION:

I. Authority

These regulations are issued under the authority of Sections 1006, 2002(a), and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 USC 6905, 6912(a), and 6924.

II. Background

Section 3004(6) of RCRA requires EPA to establish financial responsibility standards for owners and operators of hazardous waste management facilities as may be necessary or desirable to protect human health and the environment. EPA has concluded that, at a minimum, financial responsibility standards are necessary and desirable to assure that funds will be available for proper closure of facilities that treat, store, or dispose of hazardous waste and for post-closure care of hazardous waste disposal facilities. The financial responsibility standards promulgated January 12, 1981, included requirements for such assurance and also for liability insurance coverage. The amendments

promulgated today, and this Preamble, are limited to the requirements for financial assurance for closure and post-closure care.

Financial responsibility standards for inclusion in Part 264 (general standards to be used in issuing permits) and Part 265 (interim status standards for existing facilities awaiting final disposition of permit applications) were first proposed on December 18, 1978 (43 FR 58995, 59006-07). Under the proposed regulations, the owner or operator could assure payment of closure and post-closure costs only with a trust fund. The closure trust fund had to be fully paid up when established, while the post-closure fund could be built up over 20 years or the remaining operating life of the facility, whichever was shorter.

As a result of commenters' suggestions and further Agency analysis, a reproposal was issued May 19, 1980 (45 FR 32260-32278), which allowed a variety of options in providing financial assurance for closure and post-closure care: trust fund, surety bond, letter of credit, financial test, guarantee of the owner's or operator's obligations by an entity meeting the financial test, and a revenue test for municipalities. The reproposal allowed both the closure and post-closure trust funds to build over 20 years or the remaining life of the facility, whichever was shorter. State guarantees or State-required mechanisms could be used to satisfy the financial requirements if they were substantially equivalent to the mechanisms specified.

Also on May 19, 1980, final regulations establishing interim status standards for estimating the costs of closure and post-closure care (40 CFR 265.140, 142, and 144) were promulgated (45 FR 33243-44). The compliance date for these cost-estimating standards was changed from November 19, 1980, to May 19, 1981, by an amendment issued October 30, 1980 (45 FR 72040).

Interim final regulations establishing requirements for mechanisms providing financial assurance for closure and post-closure care were promulgated on January 12, 1981 (46 FR 2851, 2877-2888) with an effective date of July 13, 1981. These regulations allowed the use of trust funds, surety bonds, and letters of credit to satisfy the requirements for financial assurance for closure and post-closure care. For interim status facilities, the closure and post-closure trust fund pay-in period was 20 years or the remaining life of the facility, whichever was shorter. The pay-in period was limited to the term of the permit for permitted status. State guarantees and State-required mechanisms that are equivalent to the mechanisms specified

in the regulations could also be used to satisfy the requirements.

At the time of the January 12 promulgation, the Agency had not yet decided whether to allow use of a financial test, a guarantee based on a financial test, or a revenue test for municipalities to satisfy the financial requirements. The Agency's analysis of the numerous issues raised by commenters regarding these mechanisms was not complete at that time. The Agency decided to proceed with promulgating regulations for the other mechanisms because of the need to begin assuring financial responsibility for hazardous waste management and also the need to meet the court-ordered schedule for issuing RCRA regulations. The Agency intended to publish its decisions or regulations on the financial test, guarantee, and revenue test within 3 months of the January 12, 1981, promulgation so that owners and operators would have adequate opportunity to consider any newly available options prior to the effective date of July 13, 1981. However, this work could not be completed in the expected time. Furthermore, comments on the January 12 regulations indicated that some revision of those regulations would be desirable. To allow adequate time for completing the work on the additional options and the revisions, the effective date was deferred from July 13 to October 13, 1981 (notice published May 18, 1981, 46 FR 27119). On October 1, 1981, the effective date was again deferred, to April 13, 1982, because the revised regulations were not ready for promulgation, and the Agency was considering whether to propose withdrawal of the liability requirements.

The effective date for the standards for financial assurance of closure and post-closure care is now July 6, 1982. The effective date is thus further extended because the Agency believes that owners and operators will need approximately 3 months after promulgation to review the revised regulations and make arrangements to establish financial assurance. Owners and operators who plan to use the new insurance option need only submit by the effective date a statement from a qualified insurer saying that the insurer is considering issuance of a closure or post-closure insurance policy meeting the specifications of the regulation to the owner or operator. Within 90 days after the effective date, these owners and operators must submit a certificate of insurance as specified in the regulations or, if the policy is not issued, evidence of having established other financial assurance. The Agency is making this special provision for prospective users

of insurance option because the closure and post-closure insurance mechanisms are being published for the first time today. A competitive market in the insurance industry will develop and the Agency will be able to determine if the market should be allowed during which the market might develop and the price advantages of a competitive market might be available to owners and operators.

The current effective date for the liability requirements, April 13, 1982, is retained for the present; these requirements will be the subject of a separate Federal Register notice to be published shortly.

Today's promulgation consists essentially of the January 12, 1981, regulations with revisions to the mechanisms for financial assurance for closure and post-closure care, the addition of certain other mechanisms, and revisions to the cost-estimating provisions. The added mechanisms that may be used in providing financial assurance for closure and post-closure care are a financial test, a guarantee based on the financial test, and insurance. A revenue test for municipalities was not adopted for reasons explained below.

The following sections discuss the additions, significant changes, and major issues raised by commenters:

III. Financial Assurance for Closure and Post-Closure Care

A. The Financial Test and Guarantee

Following the original proposal of financial requirements in December 1978, commenters suggested that the Agency allow many different means of financial assurance as alternatives to the proposed trust fund. The Agency agreed that a financial test might provide adequate assurance of financial responsibility and developed such a test for inclusion in the repropoed regulations of May 19, 1980 (45 FR 33268, 33272). Evaluation of comments received on that test and further Agency analysis resulted in the financial test promulgated today.

1. *The Proposed Test.* Under the repropoed regulations of May 19, 1980, an owner or operator could satisfy the requirements for financial assurance of closure or post-closure care by having: (1) net worth of \$10 million in net worth in the United States; (2) a net worth to net worth ratio of not more than 1:1; and (3) a net worth capital in the United States of at least twice the estimated closure and post-closure costs of the owner or operator. These

characteristics of the financial statement submitted by an independent public accountant. The statement was to contain unconsolidated balance sheets dated no more than 140 days prior to the date that the test was applied. An owner or operator using the financial test had to notify the Agency within 30 days of learning that he no longer met the test. The Agency was to be notified of any change to substitute other financial statement items within 30 days. This financial test was intended to work so that an owner or operator who passed it had the financial capability to establish one of the alternative forms of financial assurance should he later fail the test. The Agency was not likely to be able to achieve this objective was retained in the subsequent development of the financial test.

2. The Financial Test Promulgated Today. After a detailed reevaluation, the Agency is promulgating regulations that allow an owner or operator to satisfy the financial assurance requirements by demonstrating that he meets the following set of criteria.

- (A) A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
- (B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates; and
- (C) Tangible net worth of at least \$10 million; and
- (D) Assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates.

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates; and

(C) Tangible net worth of at least \$10 million; and

(D) Assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates.

In developing the financial test the Agency was particularly concerned with three general goals: (1) The test should be

care for protection of human health and the environment. (2) The test should be simple enough for the owner or operator to understand and apply. (3) Costs to the regulated community of providing financial assurance should be as low as possible. The amount of direct public costs in the form of unfunded closure and post-closure care resulting from use of the test indicates the degree to which the first two goals are achieved, and the amount of private costs to owners and operators of providing financial assurance is the indicator for the third goal. In assessing the various possible test criteria, the Agency examined these costs and considered them in selecting the elements of the test.

The following sections summarize the comments received on the proposed financial test and how the final requirements were selected. This information is presented in detail in a Background Document which covers the financial test and revenue test for municipalities.

3. Comments on May 19, 1980, Proposed Test: General Aspects. Some commenters suggested that the minimum net worth and working capital requirements be higher, lower, or deleted entirely. Alternative tests or additional elements of a test were suggested, including net income, cash flow measures, "quick assets," and financial ratios. Bond ratings were suggested as an alternative to or substitute for the proposed financial test. Many commenters said the reporting requirements were not consistent with other financial reporting requirements and therefore represented high additional costs.

4. Separate Industry Tests. Some commenters suggested that each industry should have its own financial test. A review of the industries that provided comments of this kind, as well as a general analysis of industry data and previous studies of the forecasting of financial distress, suggest that a single test can be used for most firms engaged in manufacturing. However, financial tests found to be valid for distinguishing viable from nonviable firms engaged in manufacturing were often not valid or useful for establishing the viability of firms in industries with unique financial characteristics, such as utilities. Positive net working capital, for instance, is uncommon for electric utilities and firms in some other service-related industries. As a result, an alternative financial test option was developed (see Alternative II above), which is based on bond ratings and is more appropriate for utilities and firms

with similar financial characteristics. The Agency believes on the basis of its evaluation (see paragraph 8 below) that with these two options the financial test is valid for all industries likely to engage in hazardous waste management. However, anyone who believes that separate test criteria are necessary for a particular industry may submit a petition under Section 7004(a) of RCRA requesting inclusion of such criteria in the regulations. To enable the Agency to evaluate the petition adequately, it should describe the proposed criteria fully and how they may be routinely verified, and include data and analysis demonstrating the need for separate test criteria and their validity.

5. Net Working Capital Requirement. Some commenters strongly objected to the use of working capital as a test criterion, stating that their industries commonly did not maintain a positive net working capital position (excess of current assets over current liabilities). The Agency's analysis found that in manufacturing industries likely to engage in hazardous waste treatment, storage, or disposal, virtually all viable firms maintain positive net working capital. For a manufacturing firm, a negative net working capital position is an excellent indicator that the firm is in a difficult financial situation. The Agency's review of financial data for bankrupt manufacturing firms indicated that the vast majority experienced rapid decline in working capital in the years immediately prior to bankruptcy. As a result, the Agency decided to require that firms maintain a multiple of the cost estimates in the form of net working capital in one of the two test options. Firms that satisfy the other test option, which requires an investment-grade bond rating, will have proven access to credit and demonstrated viability.

Some commenters suggested modifications to the common definition of working capital that would allow owners and operators to use existing lines of credit, cash flow, or fixed assets that could be liquidated to satisfy part or all of the net working capital requirement. The Agency has decided to retain the present definition of working capital. Some of the alternatives proposed by the commenters (lines of credit, liquidation value of fixed assets) are not usual line items in financial statements and would therefore add to the administrative burden of these regulations. More importantly, the Agency believes that, given the significance of negative net working capital as an indicator of financial distress, it is useful to retain net working

nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Regional Administrator. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Regional Administrator and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

- (i) The Regional Administrator deems the facility abandoned; or
- (ii) The permit is terminated or revoked or a new permit is denied; or
- (iii) Closure is ordered by the Regional Administrator or a U.S. district court or other court of competent jurisdiction; or
- (iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

(9) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Regional Administrator, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Regional Administrator.

(10) The Regional Administrator will give written consent to the owner or operator that he may terminate the insurance policy when:

- (i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with § 264.143(f).

(f) *Financial test and corporate guarantee for closure.* (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of

The owner or operator must have:

(A) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates; and

(C) Tangible net worth of at least \$10 million; and

(D) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates.

The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates; and

(C) Tangible net worth of at least \$10 million; and

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (§ 264.151(f)).

(3) To demonstrate that he meets this test, the owner or operator must submit the following items to the Regional Administrator:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in § 264.151(f); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified

public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility must submit the items specified in paragraph (f)(3) of this section to the Regional Administrator at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

(5) After the initial submission of items specified in paragraph (f)(3) of this section, the owner or operator must send updated information to the Regional Administrator within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must send notice to the Regional Administrator of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

(7) The Regional Administrator may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (f)(3) of this section. If the Regional Administrator finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(8) The Regional Administrator may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see paragraph (f)(3)(ii) of this section). An adverse opinion or a